

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

11517 WGY

DOCKET NO:

CLAIRE GAGNE,
Plaintiff,

v.

J.C. PENNEY COMPANY, INC.,
Defendant.

MAGISTRATE JUDGE RBC

RECEIPT # _____
AMOUNT \$ 150
NOTICE OF REMOVAL ISSUED N/A
UNITED STATES FEDERAL RULE 4.1 _____
DISTRICT COURT WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. RBC
DATE 7/6/04

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Please take notice, pursuant to 28 U.S.C. Section 1446, that the defendant as named above, J.C. Penney Company, Inc., respectfully petitions this Court for removal of the above-captioned action, from the First District Court of Essex County (Salem District Court) of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. The grounds for removal are as follows:

1. On or about April 16, 2004, the above plaintiff filed a Complaint against the above defendant, J.C. Penney Company, Inc., in the Commonwealth of Massachusetts, First District Court of Essex County. A true and accurate copy of said Summons and Complaint is attached hereto as Exhibit "A." Plaintiff served a copy of her Summons and Complaint upon the defendant J.C. Penney Company, Inc., on June 7, 2004.¹

2. This civil action is pending in Essex County Massachusetts, and accordingly, under 28 U.S.C. §§101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal.

¹In filing this Notice of Removal, the defendant does not waive any defenses with regard to service of process or the adequacy of process.

3. The present action is a civil action in which this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, and may be removed to this Court pursuant to 28 U.S.C. §1446.

4. Although the plaintiff has stated as damages an amount less than \$75,000 in her state court "Statement of Damages," attached hereto as Exhibit "B," it is the defendant's position in seeking removal herein that the amount in controversy would exceed \$75,000, based upon the nature of plaintiff's personal injury claims. See e.g. DeAguilar v. Boeing Co., 47 F. 3d 1414 (5th Cir. 1995). Therefore, plaintiff states that the amount in controversy meets the statutory requirement.

5. Based upon the allegations in plaintiff's Complaint, the plaintiff is a resident of the Commonwealth of Massachusetts, Essex County.

6. Plaintiff alleges that the defendant, J.C. Penney Company, Inc., is a Delaware corporation with a principal place of business in the State of Texas.

7. The defendant is neither a resident of the Commonwealth of Massachusetts nor has a principal place of business in Massachusetts.

8. This Notice of Removal has been filed within thirty (30) days of service of the Complaint upon the defendant, and thus has been filed in a timely manner pursuant to U.S.C. §1446.

9. Because complete diversity of citizenship exists between plaintiff and defendant, and as defendant takes the position that the amount in controversy in this action exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), removal is proper pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1446.

10. Written notice of this motion will be given to the plaintiff promptly after the filing of this motion.

11. The defendant will file a notice of the filing of this Notice of Removal and a copy of this Notice of Removal with the Clerk of the First District Court of Essex County for the Commonwealth of Massachusetts.

12. Pursuant to Local Rule 81.1(A), the defendant shall request of the Clerk of the Court for the First District Court of Essex County, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, for the foregoing reasons, the defendant J.C. Penney Company, Inc. respectfully requests that the above-captioned matter pending in the First District Court of Essex County, Massachusetts be removed and that this Court take jurisdiction for trial and determination.

The Defendant,
J.C. Penney Company, Inc.
By its attorneys,



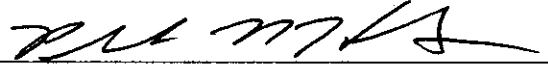
Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO #567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210-1181
(617) 439-7500

Dated: 7/6/04

CERTIFICATE OF SERVICE

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document, by certified mail, return receipt requested to Eldon D. Goodhue, Esq., Law Offices of Eldon D. Goodhue, P.C., 458 Newburyport Turnpike, Suite 3, Topsfield, MA 01983.

Dated: July 6, 2004



Philip M. Hirshberg BBO#567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210
(617) 439-7500

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

DISTRICT COURT
SALEM DIVISION
C.A. NO.CLAIRE GAGNE,
Plaintiff

V.

J.C. PENNEY COMPANY INC.,
Defendant

COMPLAINT

NOW comes the Plaintiff, Claire Gagne, and she complains of the Defendant and alleges the following as causes of action:

COUNT ONE

1. The Plaintiff, Claire Gagne, is domiciled at 15 Heritage Drive, Apt. 31, Salem, Essex County, Massachusetts.
2. The Defendant, J.C. Penney Company Inc., is a Delaware Corporation with a principal place of business at 6501 Legacy Drive, Plano, Texas.
3. The Defendant, J.C. Penney Company Inc., is subject to personal jurisdiction in this Commonwealth under Massachusetts General Laws, Chapter 223A, Section 3.



4. On or about December 29, 2002, the Plaintiff, Claire Gagne, was a patron of J.C. Penney Co. Inc., located at 210 Andover Street, Peabody, Essex County, Massachusetts.
5. On or about December 29, 2002, the Defendant, J.C. Penney Company Inc., negligently failed to keep their premises safe for patrons, and use reasonable care in allowing a stocking rack to remain in the middle of an isle in the Womens Department of their store, after the store was open for business.
6. The stocking rack, aforesaid mentioned, is an oversized rack at the bottom, and presented an unreasonably dangerous tripping hazard for patrons walking in the isle.
7. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff tripped and fell over the stocking rack, causing severe personal injury to the Plaintiff.
8. As a direct and proximate result of the aforesaid negligence of the Defendant, J.C. Penney Co. Inc., the Plaintiff, Claire Gagne, has incurred great pain and suffering and mental anguish, all to the Plaintiff's damage.
9. As a direct and proximate result of the aforesaid negligence of the Defendant, and the aforesaid injuries of the Plaintiff, Claire Gagne, the Plaintiff was placed under

the care of a physician, has incurred medical expenses, and will continue to incur medical expenses.

WHEREFORE, the Plaintiff, Claire Gagne, prays for judgment against the Defendant, J.C. Penney Co. Inc., together with interest and the costs of this action, and for such other further relief as the Court may deem proper.

COUNT TWO

10. The Plaintiff, Claire Gagne, repeats, reavers and realleges the allegations contained in Paragraphs 1 through 9 above, and incorporates them herein by reference.
11. On or about December 29, 2002, the Defendant, J.C. Penney Co. Inc., negligently failed to warn the Plaintiff and others of the dangerous tripping hazard existing in the isle where Plaintiff was injured.
12. As a direct and proximate result of the aforesaid negligent failure of the Defendant, J.C. Penney Co. Inc., to warn the Plaintiff, Claire Gagne, the Plaintiff has incurred great pain and suffering and mental anguish, all to the Plaintiff's damage.
13. As a direct and proximate result of the aforesaid negligent failure to warn of the Defendant, J.C. Penney Co. Inc., and the aforesaid injuries of the Plaintiff, Claire

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972-431-1133

JCP LEGAL DEPT

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Gagne, the Plaintiff, was placed under the care of a physician, has incurred medical expenses, and will continue to incur medical expenses.

WHEREFORE, the Plaintiff, Claire Gagne, prays for judgment against the Defendant, J.C. Penney Co. Inc., together with interest and the costs of this action, and for such other further relief as the Court may deem proper.

Dated: April 13, 2004

For the Plaintiff,
Claire Gagne,
By her attorneys,
Law Offices of Eldon D. Goodhue, PC

Eldon D. Goodhue, Esq.
B.B.O. #201520
458 Newburyport Turnpike, Suite 3
Topsfield, MA 01983
(978) 887-2000

06/15/2004 14:52 972-431 33

JCP LEGAL DEPT

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STATEMENT OF DAMAGES St. 1996, c. 35B, s. 5		DATE FILED (To be added by Clerk)	DOCKET NUMBER (To be added by Clerk)	Trial Court of Massachusetts
PLAINTIFF(S) CLAIRE GAGNE		DEFENDANT(S) J.C. PENNEY COMPANY INC.		
INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN ALL DISTRICT COURT CIVIL ACTIONS SEEKING MONEY DAMAGES IN BERKSHIRE, ESSEX, MIDDLESEX AND NORFOLK COUNTIES.		SALEM DISTRICT COURT		
TORT CLAIMS				AMOUNT
A. Documented medical expenses to date:				
1. Total hospital expenses:				\$ 12,529.16
2. Total doctor expenses:				\$
3. Total chiropractic expenses:				\$ 756.00
4. Total physical therapy expenses:				\$ 1,013.00
5. Total other expenses (Describe):				
SUBTOTAL:				\$14,298.16
B. Documented lost wages and compensation to date:				\$
C. Documented property damages to date:				\$
D. Reasonably anticipated future medical and hospital expenses:				\$
E. Reasonably anticipated lost wages:				\$
F. Other documented items of damage (Describe):				\$
G. Brief description of Plaintiff's injury, including nature and extent of injury (Describe): Plaintiff suffered injuries to her neck, back, shoulders, arm, right knee, and leg as a result of this accident.				
TOTAL:				\$14,298.16
For this form, disregard double or treble damage claims; indicate single damages only.				
CONTRACT CLAIMS				AMOUNT
Provide a detailed description of claim(s):				\$
.....				\$
.....				\$
TOTAL:				\$
For this form, disregard double or treble damage claims; indicate single damages only.				
ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):		DEFENDANT'S NAME AND ADDRESS:		
Signature		JC Penney Co. Inc.		
Date		6501 Legacy Drive		
4/13/04		Plano, TX		
Print or Type Name				
Eldon D. Goodhue, Esq.				
458 Newburyport Tpke. Suite-3				
Topsfield, MA 01983				
Address				
070 007-2000				

EXHIBIT

B

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Claire Gagne

(b) County of Residence of First Listed Plaintiff Essex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Eldon D. Goodhue, Esquire
458 Newburyport Turnpike, Suite 3
Topsfield, MA 01983 (978) 887-2000

DEFENDANTS

J.C. Penney Company, Inc.

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) (617) 439-7508
Richard R. Eurich, Esquire
Morrison Mahoney LLP
250 Summer Street, Boston, MA 02210

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK OF COURT
401-557-1733

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Claire Gagne v. J.C. Penney Company, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

 I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

 II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright

cases

 X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

 IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

 V. 150, 152, 153.

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3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

None

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO X

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES NO X

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO X

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?